

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>GENE C. BENCKINI,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>COOPERSBURG POLICE</b>	:	
<b>DEPARTMENT, et al.,</b>	:	<b>No. 03-3671</b>
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**July 27, 2004**

Pro se Plaintiff Gene Benckini commenced this civil rights action under 42 U.S.C. § 1983 against Coopersburg Borough, Coopersburg Police Department (“CPD”), Police Chief Daniel Trexler, and Coopersburg Mayor Jonathan J. Mack, Jr. Presently before the Court are Plaintiff and Defendants’ cross-motions for summary judgment pursuant to Federal Rule of Civil Procedure 56(c). For the reasons set forth below, Plaintiff’s motion is denied and Defendants’ motion is granted.

**I. BACKGROUND**

The following undisputed facts chronicle the ongoing drama between Plaintiff Gene Benckini and Defendants, which began on October 20, 1999 and has culminated in the instant action. On that date, then-Patrolman Trexler of the CPD was dispatched by the Lehigh County 911 center to speak with Heather Lloyd.<sup>1</sup> Lloyd informed Trexler that a vehicle had been following her in a harassing manner and provided a written statement of the incident. (Defs.’ Mot. for Summ. J. Ex. E (Voluntary Statement).) On the basis of Lloyd’s description of the driver and the vehicle, which included a

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<sup>1</sup> Trexler joined the Coopersburg Police Department in 1995 and was promoted to Chief of Police in September 2001. (Trexler Aff. ¶¶ 2-3.)

business logo on the door, Trexler believed the perpetrator to be Plaintiff. (*Id.* (Police Supplemental Rep. Oct. 22, 1999).) Trexler took Lloyd to Plaintiff's residence, where she positively identified the vehicle parked in the driveway as the vehicle that had been following her. (*Id.*) Lloyd also positively identified a picture of Plaintiff as the driver. (*Id.*) Based on the information provided by Lloyd, Trexler filed a non-traffic summary citation against Plaintiff for harassment. (*Id.* (Non-Traffic Citation).) On January 5, 2000, following a summary trial, Plaintiff was found guilty of this charge. (Trexler Dep. at 20-21; Defs.' Mot. for Summ. J. Ex. E (Supplemental Police Rep. Jan. 5, 2000, Aff. of Probable Cause).) According to the supplemental police report filed on the same day, Plaintiff indicated his intent to appeal this conviction, but the Court is not aware of the status of the appeal or whether it in fact was filed. (Defs.' Mot. for Summ. J. Ex. E (Supplemental Police Rep. Jan. 5, 2000).)

On March 9, 2000, Lloyd again contacted CPD and reported that, on several occasions, Plaintiff had driven by her business, the Critter Corral Pet Shop, and watched her while parked in a nearby lot. (*Id.* (Supplemental Police Rep. Mar. 10, 2000).) The police report also indicates that two witnesses corroborated Lloyd's complaints. (*Id.*) While no additional criminal charges were filed against Plaintiff at this time, Lloyd was instructed to contact the police if there were any further incidents. (*Id.* (Supplemental Police Rep. Apr. 22, 2000).) On June 15, 2001, Lloyd contacted CPD because she had received a harassing phone call from a man whose voice she believed to be Plaintiff's. (*Id.* (Incident Investigation Rep. M2862 ).) Trexler documented the incident. (*Id.*) On September 27, 2001, Lloyd called CPD and reported that Plaintiff had again been contacting the store, this time seeking information regarding the store's relocation. (*Id.* (Incident Investigation Rep. M3914).) Lloyd also informed CPD that Plaintiff threatened her in the parking lot by driving very close to her.

(*Id.*)

On October 12, 2001, Lloyd called CPD and advised Trexler that she was currently being followed by Plaintiff. (*Id.* (Lloyd Voluntary Statement Oct. 12, 2001, Investigation Rep. M4087).) Trexler proceeded to her location and spoke with Lloyd, who explained that Plaintiff had been following her, at points running her off of the road and onto the curb. (*Id.*) Following his investigation, Trexler, with the authorization of the Lehigh County District Attorney's Office, filed a Criminal Complaint and Affidavit of Probable Cause detailing the aforementioned incidents and charging Plaintiff with aggravated assault, recklessly endangering another person, and stalking. (*Id.* (Criminal Complaint), (Aff. of Probable Cause).) After the criminal complaint and affidavit of probable cause were approved by District Justice David B. Harding, an arrest warrant was issued and Plaintiff was arrested. (*Id.* (Incident Investigation Rep. M4087).)

Following a preliminary hearing, Plaintiff was held over for trial on all charges to the Lehigh County Court of Common Pleas. (*Id.* (Incident Investigation Rep. M4087).) After a jury trial, Plaintiff was convicted of stalking and recklessly endangering another person and acquitted on the charges of aggravated assault and simple assault. (*Id.* (Weintraub Aff. ¶ 7, Incident Investigation Rep. M4087).) Plaintiff was sentenced to 11½ to 23 months in prison. (*Id.* Ex. H (Sentence Sheet).) There is no evidence that Plaintiff's conviction has been overturned on appeal. (*Id.* (Weintraub Aff. ¶ 8).)

## **II. STANDARD OF REVIEW**

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c)

(1994); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, that party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Anderson*, 477 U.S. at 248. In order to meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *Celotex*, 477 U.S. at 324; *Ridgewood Bd. of Educ. v. N.E. ex rel. M.E.*, 172 F.3d 238, 252 (3d Cir. 1999) (noting that bare assertions or suspicions will not withstand motion for summary judgment). In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. See *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); see also *Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

### **III. DISCUSSION**

Plaintiff brings his claims for constitutional violations pursuant to 42 U.S.C. § 1983, which requires him to demonstrate that a person acting under color of state law deprived him of a federal right. *Gorman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). Defendants do not dispute that they are state actors for purposes of § 1983. The issue, therefore, is whether Defendants'

conduct violated Plaintiff's constitutional rights.<sup>2</sup>

**A. Claims Against Police Chief Trexler**

Plaintiff alleges that Chief Trexler violated his constitutional rights by: (1) arresting and initiating criminal proceedings against him without probable cause; (2) subjecting him to malicious prosecution; and (3) conspiring to obstruct justice. Trexler has moved for summary judgment and asserted the defense of qualified immunity. As a government official engaged in discretionary functions, Trexler is immune from suits brought against him for damages under § 1983 if his "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). When the defense of qualified immunity is asserted in a motion for summary judgment, "the plaintiff bears the initial burden of showing that the defendant's conduct violated some clearly established statutory or constitutional right." *Sherwood v. Mulvihill*, 113 F.3d 396, 399 (3d Cir. 1997). "Only if the plaintiff carries this initial burden must the defendant then demonstrate that no genuine issue of material fact remains as to the 'objective reasonableness' of the defendant's belief in the lawfulness of his actions." *Id.* Thus, the Court's first inquiry is whether Plaintiff has demonstrated a violation of a clearly established constitutional right.

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<sup>2</sup> In Plaintiff's two-page response and his supplemental reply to Defendants' motion, he reasserts the suspicions that provided the impetus for this civil action—that Defendants fabricated the criminal charges against him in Lehigh County. Plaintiff fails to substantiate his bare assertions with evidence in the record. Plaintiff has also filed a motion for summary judgment, which consists entirely of 51 exhibits, many of which have no relevance to Plaintiff's claims against the named Defendants, but rather relate to other allegedly fabricated criminal complaints against Plaintiff for stalking and related behavior. The documents presented do not establish the essential elements of Plaintiff's claims or demonstrate the absence of a dispute of material fact entitling Plaintiff to judgment as a matter of law. Accordingly, the Court denies Plaintiff's motion and the remainder of this memorandum addresses the merits of Defendants' motion.

1. *Arrest Without Probable Cause*

Plaintiff claims that Trexler violated his constitutional rights by filing charges and arresting him on the basis of Lloyd's statements without getting his "side of the story." (Benckini Dep. at 7.) The Fourth Amendment prohibits a police officer from arresting a citizen except upon probable cause, which has been defined as "facts and circumstances within the arresting officer's knowledge [that] are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Orsatti v. New Jersey State Police*, 71 F.3d 480, 485 (3d Cir. 1995) (*quoting United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990)). In determining whether probable cause exists, police officers are permitted to rely upon the statements of eyewitnesses or victims if they reasonably believe the statements are credible. *Wilson v. Russo*, 212 F.3d 781, 790 (3d Cir. 2000) (noting that positive identification by victim would usually be sufficient to establish probable cause in absence of exculpatory evidence or evidence of witness's unreliability); *Lynch v. Hunter*, Civ. A. No. 00-1331, 2000 WL 1286396, at \*3 (E.D. Pa. Sept. 1, 2000) ("But when an officer has received his information from some person—normally the putative victim or an eyewitness—who it seems reasonable to believe is telling the truth, he has probable cause to arrest the accused perpetrator." (internal quotations and citations omitted).) Although the question of probable cause in a § 1983 suit is usually one for the jury, "a district court may conclude 'that probable cause exists as a matter of law if the evidence, viewed most favorably to plaintiff, reasonably would not support a contrary factual finding,' and may enter summary judgment accordingly." *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 788-89 (3d Cir. 2000) (*quoting Sherwood*, 113 F.3d at 401).

In situations in which an individual is arrested pursuant to a facially valid arrest warrant, "[p]olice officers . . . generally are deemed to have probable cause to arrest." *Garcia v. County of*

*Bucks*, 155 F. Supp. 2d 259, 265 (E.D. Pa. 2001) (citing *Kis v. County of Schuylkill*, 866 F. Supp. 1462, 1469 (E.D. Pa. 1994)). Nonetheless, a plaintiff may succeed in a § 1983 action for false arrest made pursuant to a warrant if he demonstrates, by a preponderance of the evidence: “(1) that the police officer knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause.” *Wilson*, 212 F.3d at 786-87 (internal citation omitted).

Plaintiff has failed to produce any evidence raising a genuine issue of material fact as to whether Trexler lacked probable cause to arrest him. In this case, the affidavit of probable cause, attested to by Trexler and signed by District Justice Harding, detailed the circumstances of the five incidents described above. The facts and circumstances described are clearly more than sufficient for a reasonable person to believe that Plaintiff had committed an offense. *See Wilson*, 212 F.3d at 786 (finding similar statements sufficient). Accordingly, the affidavit, on its face, provided a substantial basis for a finding of probable cause. *United States v. Conley*, 4 F.3d 1200, 1205 (3d Cir. 1993) (citing *Illinois v. Gates*, 462 U.S. 213, 238-239 (1983)). Furthermore, to the extent that Trexler relied upon Lloyd’s statements to establish probable cause, such reliance was entirely appropriate, given that Lloyd was the putative victim and there is no evidence in the record to suggest that Trexler had reason to doubt her complaints. *Lynch*, 2000 WL 1286396, at \*3 (“Probable cause does not depend on a witness turning out to have been right; it’s what the police know, not whether they know the truth that matters.”) (quoting *Gramenos v. Jewel Cos.*, 797 F.2d 432, 439 (7th Cir. 1986)). Furthermore, there is no requirement that the police speak to Plaintiff to get his “side of the story” before arresting him.

Finally, Plaintiff has failed to adduce any evidence that Trexler made affirmative falsehoods or omissions in his affidavit. *See Lippay v. Christos*, 996 F.2d 1490, 1501 (3d Cir. 1993) (equating reckless disregard for truth with “high degree of awareness of [the statements’] probable falsity”). In fact, Plaintiff is unable to specify any false material information in the police reports. (Benckini Dep. at 63, 64, 69, 74-75.) In conclusion, there was ample probable cause to arrest Plaintiff, and Plaintiff has failed to present any evidence that Trexler made false material statements to obtain the arrest warrant.<sup>3</sup>

## 2. *Malicious Prosecution*

To sustain a civil action for malicious prosecution under § 1983, a plaintiff must show that he suffered a deprivation of some constitutional right other than substantive due process, *Torres v. McLaughlin*, 163 F.3d 169, 173 (3d Cir. 1998), and he must demonstrate the common law elements of malicious prosecution, *Gallo v. City of Phila.*, 161 F.3d 217, 222, 225 (3d Cir. 1998) (remanding because district court had, inter alia, failed to determine whether common law elements of malicious prosecution were satisfied). Under Pennsylvania law, there are four common law elements of malicious prosecution: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff’s favor; (3) the proceeding was initiated without probable cause; and (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice. *Merkle*, 211 F.3d at 791.

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<sup>3</sup> Plaintiff was also arrested by the CPD on June 15, 2001. Plaintiff has not named the arresting officer as a defendant in this lawsuit. Trexler did not arrest, investigate, or file charges against Plaintiff in connection with the June 15 incident. (Trexler Dep. at 47-48.) To the extent Plaintiff asserts claims against Trexler in connection with that arrest, such claims must be based on supervisory liability. As Plaintiff has not demonstrated Chief Trexler’s involvement or even his awareness of that arrest or the subsequent charges, he cannot be held liable in his supervisory capacity. *See infra* Part III.B.



As it is patently clear that Plaintiff cannot demonstrate a claim for malicious prosecution, the Court need not address each of the enumerated requirements. The initiation of criminal proceedings against Plaintiff was based on probable cause and resulted in Plaintiff's conviction for stalking and recklessly endangering another person. (Def.'s Mot. for Summ. J. Ex. F. (Weintraub Aff. ¶ 7).) Therefore, Plaintiff has failed to demonstrate the required element that he obtained a favorable disposition in the criminal proceeding. *Dinicola v. DiPaolo*, 945 F. Supp. 848, 861 (W.D. Pa. 1996) (noting that, under Pennsylvania law, cause of action for malicious prosecution "does not accrue until acquittal or other favorable disposition"); (Def.'s Mot. for Summ. J. Ex. F. (Weintraub Aff. ¶ 8 (noting that conviction is still valid)).)

### 3. *Conspiracy to Violate Constitutional Rights*

Plaintiff alleges that Chief Trexler and others conspired to obstruct justice by "refusing to present 7 documents that would prove Plaintiff innocent." (Compl. at 4.) Under 42 U.S.C. § 1985(2), a cause of action may be instituted against "two or more persons conspiring for the purpose of impeding, hindering, obstructing or defeating . . . the due course of justice . . . with intent to deny any citizen the equal protection of the laws." 42 U.S.C. § 1985(2) (2004). Plaintiff has failed to present any evidence of an agreement to deprive him of constitutional rights or that such agreement was based on racial or class-based animus. *Davis v. Township of Hillside*, 190 F.3d 167, 171 (3d Cir. 1999) (upholding district court's dismissal of claim because "plaintiff does not allege that the officers colluded with the requisite racial, or . . . otherwise class-based, invidiously discriminatory animus") (internal quotation omitted). In fact, Plaintiff has not even identified the seven documents to which he refers. (Benckini Dep. at 136-37.)

In conclusion, as Plaintiff has failed to demonstrate the violation of a constitutional right,

Defendants' motion for summary judgment is granted as to all claims against Defendant Trexler.

**B. Claims Against Mayor Jonathan Mack**

Plaintiff asserts claims under § 1983 against Coopersburg Borough Mayor Jonathan Mack as the supervisor of the CPD. A supervisor may be held liable in his individual capacity under § 1983 if he “with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused [the] constitutional harm,” *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Det. Ctr.*, 372 F.3d 572, 586 (3d Cir. 2004) (quoting *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 725 (3d Cir. 1989)), or, alternatively, if he “participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in his subordinates' violations,” *id.* at 586. While it is true that the Mayor of Coopersburg Borough maintains oversight authority over the CPD, it is undisputed that Jonathan Mack did not become the Mayor of Coopersburg until January 7, 2002. (Mack Dep. at 5.) As all of the alleged constitutional violations occurred before his tenure, he cannot be held individually liable in his supervisory capacity. Accordingly, Defendants' motion for summary judgment on Plaintiff's claims against Defendant Mack is granted.

**C. Claims Against Borough of Coopersburg and Coopersburg Police Department<sup>4</sup>**

Plaintiff has asserted a *Monell* claim against Defendant Borough of Coopersburg. In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978), the Supreme Court held

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<sup>4</sup> Plaintiff asserts claims against both Coopersburg Borough and the Coopersburg Police Department. In § 1983 actions, a defendant may not sue a municipal police department “because the police department is merely an administrative arm of the local municipality, and is not a separate judicial entity.” *DeBellis v. Kulp*, 166 F. Supp. 2d 255, 264 (E.D. Pa. 2001) (collecting cases). As CPD is merely an arm of Coopersburg Borough, summary judgment is granted on Plaintiff's claims against CPD.

that § 1983 may give rise to municipal liability when a constitutional violation occurs as a result of a policy, regulation, or decision officially adopted by the municipality or informally adopted by custom. Proof of the mere existence of an unlawful policy or custom, however, is not enough. In order to sustain a claim for municipal liability under § 1983, a plaintiff must show that the municipal practice was the proximate cause of his injury. *Bielewicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990).

There is no evidence before this Court that the policies or training of the Coopersburg Borough resulted in a violation of Plaintiff's constitutional rights. In fact, Plaintiff testified that his claims against the Borough are based solely on its affiliation with the police department. (Benckini Dep. at 21.) As respondeat superior is not a basis for municipal liability under § 1983, judgment in favor of Defendant Coopersburg Borough is granted. *Luzerne*, 372 F.3d at 580 ("A governmental entity cannot be liable under a theory of respondeat superior or vicarious liability.").

## **V. CONCLUSION**

In conclusion, Plaintiff has failed to present even a scintilla of evidence in support of the essential elements of his constitutional claims. *See Carter v. Exxon Co. USA*, 177 F.3d 197, 202 (3d Cir. 1999) (noting that non-movant must present "more than a 'scintilla' of evidence" to survive summary judgment). For the foregoing reasons, Defendants' motion for summary judgment is granted. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
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<b>GENE C. BENCKINI,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>COOPERSBURG POLICE</b>	:	
<b>DEPARTMENT, et al.,</b>	:	<b>No. 03-3671</b>
<b>Defendant.</b>	:	

**ORDER**

**AND NOW**, this 27<sup>th</sup> day of **July, 2004**, upon consideration of Defendant Coopersburg Borough, Coopersburg Police Department, Police Chief Daniel Trexler, and Coopersburg Mayor Jonathan J. Mack, Jr.'s Motion for Summary Judgment, Plaintiff Gene Benckini's Motion for Summary Judgment, and all responses thereto and replies thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Coopersburg Borough, Coopersburg Police Department, Police Chief Daniel Trexler, and Coopersburg Mayor Jonathan J. Mack, Jr.'s Motion for Summary Judgment (Document No. 36) is **GRANTED**.
2. Plaintiff Gene Benckini's Motion for Summary Judgment (Document No. 35) is **DENIED**.
3. Judgment is entered in favor of Defendants and against Plaintiff.
4. The Clerk of Court is directed to close this case.

**BY THE COURT:**

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**Berle M. Schiller, J.**